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Manl-ID: MAOPP2 MANUAL OF ADMIN OPERATIONS AND PROCEDURES PART 2

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SECTION 4. LEGAL MATTERS

4-1 RECORD OF LEGAL TRAINING

Each field office is to maintain records of all legal training provided to FBI investigative personnel during each fiscal year. The information should include the date of each training session, topic(s) covered, length of instruction, name(s) of the instructor(s) and the number of attendees at each session. Such records should reflect compliance with the 16-hour Uniform Course of Legal Instruction as well as steps taken to correct any delinquencies. These records should be maintained from inspection to inspection.

4-2 REPORT OF STATE LEGISLATION (See MAOP, Part II, 4-8.)

Field offices covering state capitals are to promptly advise FBIHQ, Attention: Office of the General Counsel of the enactment of any state legislation or the introduction of any bill in a state legislature that affects FBI interests. The report should be captioned "State Legislation - (name of state)." In the absence of such legislation, the Chief Division Counsel is to prepare, annually on December 31, a certification that he/she has reviewed state legislation for the preceding year, with negative results. The certification need not be submitted to FBIHQ, but is to be maintained in field office files.

4-3 REPORT OF LEGAL PROBLEMS (See MAOP, Part II, 4-8.)

All field offices are to prepare a semiannual report addressed to FBIHQ, Attention: Office of the General Counsel, Attention: Legal Instruction Unit, by electronic communication (EC) captioned "Significant Legal Developments - name of office" regarding the following matters:

- (1) Court action in which a court, in any criminal, civil, or military case, rules adversely to the prosecution on defendant's motion to suppress evidence obtained or offered by the FBI. Advise if adverse ruling is to be appealed.
- (2) Court action in any case in which the court rules that an FBI complaint or an arrest warrant or affidavit for a search warrant was defective. Enclose with the EC a copy of the court order or opinion and a copy of the complaint or affidavit. Advise if appeal is being taken.
- (3) Any ruling prejudicial to the prosecution, any mistrial declared or reversal of conviction which is the result of FBI action in the case. Enclose a copy of the court order or opinion. Advise if any appeal is being taken.
- (4) Any ruling or opinion in which a court criticizes, condemns, or otherwise adversely comments on an FBI practice or technique in a particular case or a general practice or procedure of the FBI, regardless of whether the court orders suppression of evidence or other sanctions for the conduct. Enclose a copy of the court order or opinion.

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(5) A legal problem of a policy nature affecting Bureau cases generally (as distinguished from a specific problem arising in a particular case) which must be resolved but cannot be resolved with the USA, magistrate, marshal, or other official at that level should be reported promptly. However, these problems are not included in the semiannual report.

(6) Any ruling, opinion, or court action which is positive in nature and may prove beneficial to investigative activities Bureau wide.

4-3.1 Preparation of Report

The semiannual report should be in the form of an EC to the Office of the General Counsel, Attention: Legal Instruction Unit, submitted by June 15 and December 15 of each year, and should be prepared by the Chief Division Counsel to ensure that all relevant ramifications are identified and explained in detail. Identify the case by title and character in the body of the EC. Submit a report promptly where court action deserves immediate notification. Refer to such reports in the following semiannual report. Where no court action, as described, has occurred during a particular period, a report does not need to be submitted.

4-4 NOTIFICATION TO FBIHQ OF SIGNIFICANT CIRCUIT COURT OPINIONS

Each office of prosecution, by close liaison with the office of the U.S. Attorney, should assure that it is promptly advised of any Circuit Court decision which has a significant impact on the operations of the FBI. Since the attorney of record (Assistant U.S. Attorney, generally) will be promptly informed of the disposition of his/her case by the appellate court, arrangements should be made for timely notification of these important decisions, either directly or through the case Agent, to the Chief Division Counsel. The Chief Division Counsel in turn should advise FBIHQ, Attention: Office of the General Counsel, of such cases. Communication of these decisions should be made by expeditious means (teletype, telephone), if deemed necessary by the Chief Division Counsel. A copy of the Circuit Court opinion should be obtained as quickly as possible and forwarded to the Office of the General Counsel, FBIHQ.

4-5 PENDING CASES BEFORE UNITED STATES SUPREME COURT

The Legal Instruction Unit, Office of the General Counsel, will follow in the "Criminal Law Reporter" and/or "United States Law Week" all FBI cases appealed to the Supreme Court, and will advise the office of origin of the disposition of such cases in the Court.

4-6 SUBMISSION OF DISPOSITION FORM (R-84) TO FBIHQ (See MAOP, Part 2, 3-5.4; MIOG, Part 2, 14-15.1.1(7).)

In any case, where a field office takes credit on an FD- 515 for the arrest or conviction of an FBI subject in connection with violations of a federal law, the Office of Origin of the case must ensure that the Criminal Justice Information Services Division (CJIS) is advised of the final disposition or any amended disposition. This can be accomplished by forwarding a Final Disposition Form (R-84)

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to the CJIS division. If the Office of Origin has determined that another field office or other criminal justice agency has already submitted the disposition to the CJIS Division, it is not necessary to forward the R-84. However, the Office of Origin must document in the investigative file the identity of the agency or lead office which submitted the R-84 and similarly note such information in the "Remarks" section of the FD-515.

4-7 CHIEF DIVISION COUNSEL, ASSOCIATE DIVISION COUNSEL, AND LEGAL ADVISORS (See MAOP, Part I, 3-2.21.)

(1) Chief Division Counsel - A Chief Division Counsel (CDC) shall be selected for each field office. In those offices where the CDC position has been upgraded to a permanent GS-14 or GS-15, the selection shall be in the following manner:

(a) Vacancies shall be advertised through the Executive Development and Selection Program (EDSP);

(b) Candidates wishing to compete shall submit FD-638s to the Special Agents' Mid-Level Management Selection (SAMMS) Board and to the candidate's division head;

(c) A CDC in one field office can apply for the same position in another field office; however, these transfers ordinarily will be approved only in circumstances where a CDC in a smaller field office is applying for the CDC position in a substantially larger field office. ADCs will be permitted to compete for CDC positions in any field office, but will be permitted to transfer laterally to an ADC position in another field office only when a fully qualified candidate is not identified in the advertising field office.

(d) Following review of the FD-638s, and consultation with the division head where the vacancy is located, the General Counsel will recommend a candidate to the SAMMS Board which is responsible for final selection.

Candidates for the above-described CDC position must: be Special Agent attorneys with at least three years of investigative experience; be members of the bar; and have completed the Basic Legal Advisors' In-Service. (2) Associate Division Counsel (ADC) - Where justified by the nature, volume, and complexity of legal work, a field office is permitted one full-time GS-14 ADC, in addition to the CDC, for each 200 Special Agents represented by the Target Staffing Level of that office. Upon the recommendation of the Assistant Director in Charge (ADIC) or Special Agent in Charge (SAC), the General Counsel may approve the creation of the appropriate number of positions.

An ADIC/SAC may consider staffing the position of ADC with either an Agent or non-Agent attorney. The selection process will depend on the decision to use Agents or non-Agents. If competition is limited to Agents, selection and qualifications shall be the same as for CDCs as described above. If competition is opened to non-Agents, such applications will be considered along with the FD-638s submitted by Agent-attorneys as the result of a fieldwide posting through the EDSP.

(3) Legal Advisor - The term "Legal Advisor" shall continue to be used to describe an Agent-attorney who has completed the Basic Legal Advisors' In-Service, and is available to provide legal

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instruction or legal advice/assistance to FBI or other law enforcement personnel. Selection of Agent-attorneys to attend the Basic Legal In- Service shall be at the discretion of ADIC/SAC.

4-8 DUTIES OF CHIEF DIVISION COUNSEL (CDC) AND ASSOCIATE DIVISION COUNSEL (ADC) (See MAOP, Part II, 4-2, 4-3 and 4-9.)

(1) The CDC is the chief legal officer in an FBI field office. As such, the CDC is responsible to ensure the appropriate handling of all legal programs within the office, as well as to ensure that all legal problems that arise are appropriately addressed. The primary duties of the CDC include providing legal counsel and advice to office management, supervisors and investigators on administrative and operational matters; providing or assisting in the defense of litigation filed against the FBI and its employees; monitoring and reporting legal problems or matters of interest arising in the division; conducting necessary research; providing legal training to FBI and other law enforcement personnel; and establishing and maintaining liaison with the U.S. Attorney's office, state and local prosecutors, and other government attorneys involved in law enforcement. CDCs are also responsible for other legal duties that may be assigned or specifically approved by the Office of the General Counsel.

(2) The ADC shall work under the supervision of the CDC and shall perform those duties delegated or assigned by the CDC.

4-9 LEGAL ADVISORS (LA)

The LA is to assist the CDC and/or ADC in the duties described in 4-8.

4-10 APPOINTMENT OF CHIEF DIVISION COUNSEL, ASSOCIATE DIVISION COUNSEL AND LEGAL ADVISORS AS SPECIAL ASSISTANT UNITED STATES ATTORNEYS

(1) Prior to the appointment of any Chief Division Counsel, Associate Division Counsel or Legal Advisor (LA) as a Special Assistant United States Attorney (SAUSA) by the applicable United States Attorney (USA), the affected field office, through its Chief Division Counsel, must first obtain Office of the General Counsel (OGC) approval. The requesting electronic communication should contain the following information:

(a) The name and background of the proposed appointee. This should include the appointee's EOD date, legal education, bar membership, status in the Bureau's Legal Program and present investigative caseload.

(b) Information concerning the responsibilities of the proposed SAUSA position. This should include the name of the requesting USA and those responsibilities the USA proposes be assumed by the SAUSA.

(c) The reason the USA has made this request, i.e., the burden now carried by the USA which could be relieved by appointment of an SAUSA.

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- (d) The term and expiration date of the proposed appointment.
 - (e) SAC approval. This should include the SAC's assessment of the effectiveness of the SAUSA proposal and its benefit to the FBI. It should also include an opinion concerning any impact upon that office's ability to perform its investigative functions and the ability of the proposed SAUSA to fulfill his/her assigned duties as a Special Agent.
- (2) If OGC approves the request it will include in its notification the following:
- (a) Any limitations placed upon the responsibilities of the SAUSA. The proposed appointee will also be reminded that he/she is not to broaden these responsibilities without OGC approval and of any applicable restrictions found in Title 28, Code of Federal Regulations, Section 50.15 concerning representation matters or in Rule 6(e), Federal Rules of Criminal Procedure, regarding federal grand jury matters.
 - (b) That the proposed SAUSA is not to assume the additional SAUSA functions unless and until the requesting USA has received the appropriate DOJ approval pursuant to UNITED STATES ATTORNEYS' MANUAL, Sections 1-3.540, 10-2.230 and 9-11.352, and the SAUSA has executed the required oath of office.
 - (c) That the SAUSA is to serve without any compensation other than that which he/she is presently receiving under his/her appointment as a Special Agent of the FBI.
- (3) When an appointment as an SAUSA is set to expire, an electronic communication must be sent to FBIHQ, Attention: Office of the General Counsel, advising whether the appointment will expire or be renewed. If the appointment is renewed under the same terms and conditions as previously approved, a request for continued authority should be submitted UACB. If a change in the duties, responsibilities or conditions is sought, the information identified in paragraph (1), above, must be provided.

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